



6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2010-0936; FRL-9692-1]

## Approval and Promulgation of Implementation Plans; State of Georgia; Regional Haze State Implementation Plan

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is finalizing a limited approval of a revision to the Georgia State Implementation Plan (SIP) submitted by the State of Georgia through the Georgia Department of Environmental Protection Division (GA EPD) on February 11, 2010, as supplemented November 19, 2010 (hereafter also referred to as “Georgia’s regional haze SIP”). Georgia’s SIP revisions address regional haze for the first implementation period. Specifically, these SIP revisions address the requirements of the Clean Air Act (CAA or Act) and EPA’s rules that require states to prevent any future and remedy any existing anthropogenic impairment of visibility in mandatory Class I areas (national parks and wilderness areas) caused by emissions of air pollutants from numerous sources located over a wide geographic area (also referred to as the “regional haze program”). States are required to assure reasonable progress toward the national goal of achieving natural visibility conditions in Class I areas. EPA is finalizing a limited approval of Georgia’s SIP revisions to implement the regional haze requirements on the basis that these SIP revisions, as a whole, strengthen the Georgia SIP. In a separate action published on June 7, 2012, EPA proposed a limited disapproval of these same SIP revisions because of the

deficiencies in the State's regional haze SIP arising from the remand by the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) to EPA of the Clean Air Interstate Rule (CAIR).

**EFFECTIVE DATE:** This rule will be effective [insert 30 days from the date of publication in the Federal Register].

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2010-0936. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section for further information. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Michele Notarianni, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Michele Notarianni can be reached at telephone number (404) 562-9031 and by electronic mail at [notarianni.michele@epa.gov](mailto:notarianni.michele@epa.gov).

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### **I. What is the Background for This Final Action?**

Regional haze is visibility impairment that is produced by a multitude of sources and activities which are located across a broad geographic area and emit fine particles (e.g., sulfates, nitrates, organic carbon, elemental carbon, and soil dust), and their precursors (e.g., sulfur dioxide (SO<sub>2</sub>), nitrogen oxides (NO<sub>x</sub>), and in some cases, ammonia and volatile organic compounds. Fine particle precursors react in the atmosphere to form fine particulate matter (PM<sub>2.5</sub>) which impairs visibility by scattering and absorbing light. Visibility impairment reduces the clarity, color, and visible distance that one can see. PM<sub>2.5</sub> can also cause serious health

effects and mortality in humans and contributes to environmental effects such as acid deposition and eutrophication.

In section 169A of the 1977 Amendments to the CAA, Congress created a program for protecting visibility in the nation's national parks and wilderness areas. This section of the CAA establishes as a national goal the "prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I areas which impairment results from manmade air pollution." On December 2, 1980, EPA promulgated regulations to address visibility impairment in Class I areas that is "reasonably attributable" to a single source or small group of sources, i.e., "reasonably attributable visibility impairment." *See* 45 FR 80084. These regulations represented the first phase in addressing visibility impairment. EPA deferred action on regional haze that emanates from a variety of sources until monitoring, modeling, and scientific knowledge about the relationships between pollutants and visibility impairment were improved.

Congress added section 169B to the CAA in 1990 to address regional haze issues. EPA promulgated a rule to address regional haze on July 1, 1999 (64 FR 35714), the Regional Haze Rule (RHR). The RHR revised the existing visibility regulations to integrate into the regulation provisions addressing regional haze impairment and established a comprehensive visibility protection program for Class I areas. The requirements for regional haze, found at 40 CFR 51.308 and 51.309, are included in EPA's visibility protection regulations at 40 CFR 51.300-309. The requirement to submit a regional haze SIP applies to all 50 states, the District of Columbia,

and the Virgin Islands. 40 CFR 51.308(b) requires states to submit the first implementation plan addressing regional haze visibility impairment no later than December 17, 2007.

On February 11, 2010, as supplemented November 19, 2010, GA EPD submitted revisions to Georgia's SIP to address regional haze in the State's and other states' Class I areas. On February 27, 2012, EPA published an action proposing a limited approval of Georgia's regional haze SIP revision to address the first implementation period for regional haze.<sup>1</sup> *See* 77 FR 11452. EPA proposed a limited approval of Georgia's SIP revisions to implement the regional haze requirements for Georgia on the basis that these revisions, as a whole, strengthen the Georgia SIP. *See* section II of this rulemaking for a summary of the comments received on the proposed actions and EPA's responses to these comments. Detailed background information and EPA's rationale for the proposed action is provided in EPA's February 27, 2012, proposed rulemaking. *See* 77 FR 11452.

Following the remand of CAIR, EPA issued a new rule in 2011 to address the interstate transport of NO<sub>x</sub> and SO<sub>2</sub> in the eastern United States. *See* 76 FR 48208 (August 8, 2011) ("the Transport Rule," also known as the Cross-State Air Pollution Rule (CSAPR)). On December 30, 2011, EPA proposed to find that the trading programs in the Transport Rule would achieve greater reasonable progress towards the national goal of achieving natural visibility conditions than would Best Available Retrofit Technology (BART) in the states in which the Transport Rule applies (including Georgia). *See* 76 FR 82219. Based on this proposed finding, EPA also

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<sup>1</sup> In a separate action published on June 7, 2012 (77 FR 33642), EPA finalized a limited disapproval of the Georgia regional haze SIP because of deficiencies in the State's regional haze SIP submittal arising from the State's reliance on CAIR to meet certain regional haze requirements. Also, in that June 7, 2012, action, EPA finalized a Federal Implementation Plan (FIP) for Georgia to address the deficiencies that resulted from the State's reliance on CAIR for their regional haze SIP.

proposed to revise the RHR to allow states to substitute participation in the trading programs under the Transport Rule for source-specific BART. EPA finalized this finding and RHR revision on June 7, 2012 (77 FR 33642).

Also on December 30, 2011, the D.C. Circuit stayed the Transport Rule (including the provisions that would have sunset CAIR and the CAIR FIPs) and instructed the EPA to continue to administer CAIR pending the outcome of the court's decision on the petitions for review challenging the Transport Rule. *EME Homer City v. EPA*, No. 11-1302.

## **II. What is EPA's Response to Comments Received on This Action?**

EPA received 928 sets of comments on the February 27, 2012, rulemaking proposing a limited approval of Georgia's regional haze SIP revision. Specifically, the comments were received from the National Parks Conservation Association (NPCA) (on behalf of NPCA, Friends of the Chattahoochee, and GreenLaw) and from various individuals through NPCA (927 e-mails identical in substantive content). Full sets of the comments provided by all of the aforementioned entities (hereinafter referred to as "the Commenter") are provided in the docket for today's final action. A summary of the comments and EPA's responses are provided below.

**Comment 1:** The Commenter does not believe that EPA's proposal to replace Georgia's reliance on CAIR with a reliance on CSAPR to satisfy BART for SO<sub>2</sub> and NO<sub>x</sub> is credible. The Commenter incorporates by reference comments that it submitted to EPA on February 28, 2012,

regarding the Agency's December 30, 2011, proposed rulemaking to find that the Transport Rule is "Better than BART" and to use the Transport Rule as an alternative to BART for Georgia through a FIP. *See* 76 FR 82219. The Commenter enclosed one of the comment letters that it submitted to EPA on February 28, 2012, and a comment letter that it submitted to EPA on March 22, 2012, on the Agency's proposed February 21, 2012, direct final rule adjusting several 2012 and 2014 budgets in the Transport Rule (*see* 77 FR 10342). The Commenter restates several of its comments on those rulemaking actions, including the following: EPA's proposed December 30, 2011, "Better than BART" rule is inconsistent with the CAA and does not provide reasonable progress as required by the RHR; EPA cannot rely on the Transport Rule because the D.C. Circuit has indefinitely stayed the rule; EPA has not complied with the CAA's statutory requirements for a BART exemption; EPA has failed to make a state-by-state demonstration that CSAPR is better than BART; EPA included fatal methodological flaws in its proposed "Better than BART" determination;<sup>2</sup> EPA failed to account for the geographical and temporal uncertainties in emissions reductions inherent in a cap-and-trade program such as the Transport Rule; EPA's "Better than BART" analysis overstates the air quality benefits provided by the Transport Rule; EPA failed to consider that while allowances are issued for a given year, sources are under no obligation to ration the allowances out over the year; neither Georgia nor EPA has demonstrated that Transport Rule is "better than BART" as applied to Georgia; EPA failed to evaluate whether exempting Georgia electric generating units (EGUs) from BART complies with the CAA's reasonable progress mandate; and the changes to Georgia's CSAPR emission budget increase the likelihood that CSAPR will not achieve greater reasonable progress than BART at

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<sup>2</sup> See footnote 6 in the Commenter's March 28, 2012, letter for a full description.

many Class I areas. The Commenter contends that these “shortcomings . . . impede the Agency’s ability to finalize the proposed partial FIP or the proposed limited SIP approval for Georgia. Instead EPA must rectify these shortcomings and issue a proper federal plan in its place.”

**Response 1:** The comments regarding the alleged “shortcomings” in EPA’s proposed “Better than BART” rule are beyond the scope of this rulemaking. In today’s action, EPA is finalizing a limited approval of Georgia’s regional haze SIP. EPA did not propose to find that participation in the Transport Rule is an alternative to BART in this action nor did EPA reopen discussions on the CAIR provisions as they relate to BART.<sup>3</sup> As noted above, EPA proposed to find that the Transport Rule is “Better than BART” and to use the Transport Rule as an alternative to BART for Georgia in a separate action on December 30, 2011, and the Commenter is merely reiterating and incorporating its comments on that separate action. EPA addressed the Commenter’s February 28, 2012, comments concerning the Transport Rule as a BART alternative in a final action that was published on June 7, 2012, and has determined that they do not affect the Agency’s ability to issue a limited approval of Georgia’s regional haze SIP. EPA’s responses to these comments can be found in Docket ID No. EPA-HQ-OAR-2011-0729 at [www.regulations.gov](http://www.regulations.gov).

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<sup>3</sup> In the final BART Guidelines rulemaking on July 6, 2005, EPA addressed similar comments related to CAIR and made the determination that CAIR makes greater reasonable progress than BART for certain EGUs and pollutants (70 FR 39138-39143). EPA did not reopen comment on this issue through this rulemaking.



**Comment 2:** The Commenter asserts that EPA does not have the authority under the CAA to issue a limited approval of Georgia’s regional haze SIP. The Commenter contends that section 110(k) of the Act only allows EPA to fully approve, partially approve and partially disapprove, conditionally approve, or fully disapprove a SIP.

**Response 2:** As discussed in the September 7, 1992, EPA memorandum cited in the proposed rulemaking,<sup>4</sup> although section 110(k) of the CAA may not expressly provide authority for limited approvals, the plain language of section 301(a) does provide “gap-filling” authority authorizing the Agency to “prescribe such regulations as are necessary to carry out” EPA’s CAA functions. EPA may rely on section 301(a) in conjunction with the Agency’s SIP approval authority in section 110(k)(3) to issue limited approvals where it has determined that a submittal strengthens a given state SIP and that the provisions meeting the applicable requirements of the Act are not separable from the provisions that do not meet the Act’s requirements. EPA has adopted the limited approval approach numerous times in SIP actions across the nation over the last twenty years. A limited approval action is appropriate here because EPA has determined that Georgia’s SIP revision addressing regional haze, as a whole, strengthen the State’s SIP and because the provisions in the Georgia regional haze SIP are not separable.

The Commenter asserts that EPA’s action “directly contradicts the plain language of the Clean Air Act” and cites several federal appellate court decisions to support its contention that

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<sup>4</sup> *Processing of State Implementation Plan (SIP) Revisions*, EPA Memorandum from John Calcagni, Director, Air Quality Management Division, OAQPS, to Air Division Directors, EPA Regional Offices I-X, September 7, 1992, (“1992 Calcagni Memorandum”) located at <http://www.epa.gov/ttn/caaa/t1/memoranda/siproc.pdf>.

section 110(k) of the Act limits EPA to a full approval, “a conditional approval, a partial approval and disapproval, or a full disapproval.” However, adopting the Commenter’s position would ignore section 301 and violate the “‘fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme’.... A court must therefore interpret the statute ‘as a symmetrical and coherent regulatory scheme,’... and ‘fit, if possible, all parts into an harmonious whole.’” *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) (quoting *Davis v. Michigan Dept. of Treasury*, 489 U.S. 803, 809 (1989), *Gustafson v. Alloyd Co.*, 513 U.S. 561, 569 (1995), and *FTC v. Mandel Brothers, Inc.*, 359 U.S. 385, 389 (1959)). Furthermore, the cases cited by the Commenter did not involve challenges to a limited approval approach, and one of the cases, *Abramowitz v. EPA*, 832 F.2d 1071 (9<sup>th</sup> Cir. 1988) predates the 1990 CAA amendments enacting section 110(k).

**Comment 3:** The Commenter asserts that the proposed limited approval violates the CAA and RHR because EPA failed to evaluate or determine whether exempting Georgia’s EGUs from BART complies with the Act’s reasonable progress mandate. The Commenter supports its position by repeating statements made in its February 28, 2012, comments on the Agency’s proposed December 30, 2011, rulemaking to find that the Transport Rule is “Better than BART” and to use the Transport Rule as an alternative to BART for Georgia and other states subject to the Transport Rule. For example, the Commenter states that because [a]ll required components

of a Regional Haze SIP or FIP affect each other, are part of a ‘single administrative action’ and must be evaluated together,” EPA’s “failure to consider together the proposed alternative BART program, the long-term strategy and reasonable progress goals in Georgia’s SIP violates the Clean Air Act and RHR and is arbitrary and capricious.”

**Response 3:** As discussed in the response to Comment 1, today’s action does not address reliance on CAIR or CSAPR to satisfy BART requirements. Comments related to the approvability of CAIR or CSAPR for the Georgia regional haze SIP are therefore beyond the scope of this rulemaking and were addressed by EPA in a separate action published on June 7, 2012 (77 FR 33642). EPA addressed the Commenter’s repeated statements regarding the interrelatedness of BART, the long-term strategy (LTS), and reasonable progress goals (RPGs) in that final rulemaking action and those responses support this limited approval action.<sup>5</sup>

EPA believes that the Commenter overstates the overarching nature of the changes due to CAIR or CSAPR. The basis for the assertion that GA EPD exempted EGUs from NO<sub>x</sub> BART and that it in some way affected the reasonable progress determinations for other sources is not clear. The reliance on CAIR in the Georgia submittal was consistent with EPA policy at the time the submittal was prepared. CSAPR is a replacement for CAIR, addressing the same regional EGU emissions, with many similar regulatory attributes. The need to address changes to the LTS resulting from the replacement of CAIR with CSAPR was acknowledged in the proposal,

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<sup>5</sup> See EPA, Response to Comments Document, Regional Haze: Revisions to Provisions Governing Alternatives to Source-Specific Best Available Retrofit Technology (BART) Determinations, Limited SIP Disapprovals, and Federal Implementation Plans (76 FR 82219; December 30, 2011), Docket Number EPA-HQ-OAR-2011-0729 (May 30, 2012), pages 49-51 (noting that EPA “disagree[s] with comments that we cannot evaluate the BART requirements in isolation from the reasonable progress requirements. We have on several occasions undertaken evaluations of a state’s BART determination or promulgated a FIP separately from our evaluation of whether the SIP as a whole will ensure reasonable progress.”).

and as stated in the proposal, EPA believes the five-year progress report is the appropriate time to address any changes to the RPG demonstration and, if necessary, the LTS. EPA expects that this demonstration will address the impacts on the RPG due to the replacement of CAIR with CSAPR as well as other adjustments to the projected 2018 emissions due to updated information on the emissions for other sources and source categories. If this assessment determines an adjustment to the regional haze plan is necessary, EPA regulations require a SIP revision within a year of the five-year progress report.

**Comment 4:** The Commenter contends that the BART determination for Interstate Paper is inadequate. Specifically, for the power boiler, the Commenter does not believe that the permit language limits the emissions from the power boiler since the permit allows for the use of fuel oil during times of natural gas curtailment and for the burning of non-condensable gases (NCG) when two other units are down, but does not adequately define or place limits on the duration of such events or the emissions that result. The Commenter states that the BART determination was also used inappropriately to allow the facility to avoid Prevention of Significant Deterioration (PSD) review for modifications to the Recovery Furnace and Paper Machine intended to increase production. The Commenter is concerned that at all three of these units, EPA proposes to approve no additional emissions controls for some pollutants but does not specify an appropriately stringent limit for the existing emissions. Finally, the Commenter believes there are a number of errors in the BART determination for this source including:

assuming a low removal efficiency for selective catalytic reduction (SCR) (80 percent instead of 90 percent); lack of technical, quantified justification for dismissing SCR as technically infeasible for the Recovery Boiler; and prematurely removing controls from examination based on economic factors alone.

**Response 4:** The Commenter overstates the scope and impact of the exemptions from the use of natural gas to address natural gas curtailments or for the burning of NCGs. EPA regards these exemptions as acceptable in this circumstance as permitted. Natural gas curtailment is commonly understood to be a forced reduction in service below contracted-for levels in response to inadequate pipeline capacity or inadequate natural gas supplies, both of which are beyond the control of the user (see, e.g., 40 CFR Part 60.7575; Georgia Air Quality Control Rules 391-3-1-.02(rrr)(5)). Examples of situations that may trigger curtailment are hurricane damage to supplies or extreme cold weather requiring allocation of natural supplies to priority needs such as homes and hospitals. With regard to the NCG exemption, the power boiler, along with the lime kiln, is used as a backup control device to burn NCGs from other operations at the mill. The power boiler can only burn NCGs when the lime kiln (primary NCG control device) and the multi-fuel boiler (secondary NCG control device) are out-of-service. Both the latter two sources have existing SO<sub>2</sub> control devices on their exhaust streams. The current title V permit limits the SO<sub>2</sub> from NCG combustion to less than 40 tons per year. Although actual emissions are expected to be much less, this limit was used in the modeling of the impacts of this source for BART.

Regarding any relationship between the BART determination and PSD requirements, decisions on PSD applicability are subject to separate provisions of the CAA and are therefore beyond the scope of this rulemaking. With regard the existing emissions limits, all other emissions limits used in assessing the impact of the facility are contained in the title V permit and are appropriately stringent. Finally, with regard to the “flaws” cited in the BART determination, EPA finds that the analysis was conducted in accordance with the *Guidelines for BART Determinations Under the Regional Haze Rule* at Appendix Y to 40 CFR Part 51 (hereinafter referred to as the “BART Guidelines”) and that the State appropriately considered the statutory factors. Additional NO<sub>x</sub> controls were not considered (e.g., SCR) as BART due to the relatively small benefit to visibility from these controls.

**Comment 5:** The Commenter believes that the PM BART determination for Georgia Power - Plant Bowen is inadequate, that Georgia did not demonstrate the appropriateness of only evaluating PM BART for EGUs, and that the State did not evaluate the impact of PM for a number of EGUs that are more appropriately considered subject to BART than Plant Bowen. The Commenter expressed the following concerns with the proposed BART determination: it concludes that no additional controls are needed, and therefore does not require an emissions limit; it must reflect filterable and condensable PM; not all feasible control options were evaluated (e.g., fabric filters); the cost estimates and cost effectiveness values were overestimated; and control options that involve improvements to existing controls were not

completely addressed.

**Response 5:** Plant Bowen is subject to emissions limits, and the PM emissions limits from its electrostatic precipitator (ESP) are identified in the facility's title V permit. Furthermore, all PM was considered in the BART determination; each evaluated control option in Georgia's regional haze SIP considered the contribution of total PM<sub>10</sub> and PM<sub>2.5</sub> (as a subset of the total PM<sub>10</sub>) as well as condensable PM (primarily sulfuric acid mist) (see Appendix H.8 of Georgia's February 2010 regional haze SIP submittal). The installed controls on both facilities are effective at reducing filterable and condensable particulates. Regarding modeling in Georgia's regional haze SIP that uses PM only for its BART-eligible EGUs, EPA previously determined that this approach is appropriate for EGUs where the State proposed to rely on CAIR to satisfy the BART requirements for SO<sub>2</sub> and NO<sub>x</sub>.<sup>6</sup>

Regarding the need to assess all feasible control options, including improvements to existing controls, as is stated in EPA's BART Guidelines, available retrofit control options are those air pollution control technologies with a practical potential for application to the emissions unit and the regulated pollutant under evaluation. In identifying "all" options, a state must identify the most stringent option and a reasonable set of options for analysis that reflects a comprehensive list of available technologies. It is not necessary to list all permutations of available control levels that exist for a given technology; the list is complete if it includes the

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<sup>6</sup> *Regional Haze Regulations and Guidelines for Best Available Retrofit Technology (BART) Determinations*, EPA Memorandum from Joseph Paisie, Group Leader, Geographic Strategies Group, OAQPS, to Kay Prince, Branch Chief, EPA Region 4, July 19, 2006, located at: [http://www.epa.gov/visibility/pdfs/memo\\_2006\\_07\\_19.pdf](http://www.epa.gov/visibility/pdfs/memo_2006_07_19.pdf).

maximum level of control that each technology is capable of achieving.<sup>7</sup> In this instance, each of the EGU's PM emissions is already controlled by ESPs and wet flue gas desulfurization (FGD), (SO<sub>2</sub> scrubbers) which were installed on Plant Bowen between 2008 and 2010. Georgia Power identified the following four potential additional control technologies: (a) high voltage power conditioners (juice cans); (b) particle agglomerators; (c) the combination of juice cans and particle agglomerators; and (d) a wet ESP. Wet ESPs are the only control option that resulted in a modeled visibility improvement greater than 0.01 deciview. Wet ESPs were predicted to improve visibility by approximately 0.14 to 0.16 deciview for each unit at a cost effectiveness of \$37,107 to \$47,909 per ton. In addition, the wet ESP would consume additional electricity and have non-air environmental impacts. The combination high voltage power conditioner (juice can); /particle agglomerator option modeled a visibility benefit of 0.01 deciview for each unit at a cost effectiveness of \$12,222 to \$21,914 per ton SO<sub>2</sub>.

While the adjustments to the cost analyses suggested by the Commenter would lower the cost effectiveness of the options evaluated, the suggested changes would not be large enough to change the BART determination. The State evaluated the cost effectiveness, visibility impacts, and energy and non-air environmental impacts of these control options. GA EPD determined that no additional control was reasonable for BART for this facility and EPA agrees with this determination. EPA finds the BART determination for Plant Bowen was conducted in a manner consistent with EPA guidance.

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<sup>7</sup> EPA's BART Guidelines. *See* 70 FR 39164.



**Comment 6:** The Commenter states that due to its reliance on CAIR (and now CSAPR), Georgia failed to evaluate numerous sources that contribute significantly to visibility impairment at the Cohutta Wilderness Area (Cohutta). The Commenter also states that none of the CAIR or CSAPR sources have a completed BART determination for NO<sub>x</sub> or SO<sub>2</sub> since CSAPR allocations are not determined on an assessment of many of the same factors that must be addressed in establishing the RPG. Because of this, the Commenter states that neither Georgia nor EPA has determined whether additional progress at Cohutta would be reasonable based on the statutory factors, and this responsibility cannot be excused simply because Cohutta may meet the URP. The Commenter also believes that Georgia and EPA excused the No. 4 boiler at the Temple-Inland Rome Linerboard Mill from additional control based on the predicted ability to meet the URP at Cohutta, despite identifying otherwise cost-effective control options, and that this decision does not fulfill the State's obligation to go beyond the URP in evaluating reasonable progress and in establishing RPGs.

**Response 6:** The State's reliance on CAIR was consistent with EPA guidance and has been addressed through the limited disapproval June 7, 2012, final action. The Commenter's concerns regarding CSAPR were also addressed in that June 7, 2012, rulemaking. Any differences in the RPGs that result from the reliance on CAIR will be addressed in the five-year review.

Regarding the Temple-Inland Rome Linerboard Mill, as was stated in the proposal (77 FR 11468) and in EPA's Reasonable Progress Guidance,<sup>8</sup> the states have wide latitude to

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<sup>8</sup> *Guidance for Setting Reasonable Progress Goals Under the Regional Haze Program*, July 1, 2007, memorandum from William L. Wehrum, Acting Assistant Administrator for Air and Radiation, to EPA Regional Administrators, EPA Regions 1–10, page 4-2.

determine appropriate additional control requirements for ensuring reasonable progress, and there are many ways for a state to approach identification of additional reasonable measures. States must consider the four statutory factors, at a minimum, in determining reasonable progress, but states have flexibility in how to take these factors into consideration. GA EPD's reasonable progress control analysis reviewed: (a) two wet FGD configurations (magnesium enhanced lime) and limestone forced oxidation; (b) dry FGD (lime absorbent); (c) fuel switching; and (d) dry sorbent injection. The State determined that none of the control options considered for Power Boiler 4 is reasonable at this time. A key factor in determining what was considered "reasonable" for reasonable progress requirements for this source is that the improvement in visibility from the emissions controls evaluated ranged from 0.11 to 0.17 inverse megameters at the affected Class I areas impacted by this unit. The State determined, and EPA agrees, that none of the control options considered for Power Boiler 1 is reasonable given the predicted visibility improvement.

Regarding the need to go beyond the URP analysis when establishing RPGs, EPA affirmed in the RHR that the URP is not a "presumptive target;" rather, it is an analytical requirement for setting RPGs. *See* 64 FR 35731, 35732, July 1, 1999. In determining RPGs for Georgia's Class I areas, the State identified sources through its area of influence methodology for reasonable progress control evaluation and described those evaluations in its SIP. Thus, the State went beyond the URP analysis to identify and evaluate sources for potential control under reasonable progress in accordance with EPA regulations and guidance.

**Comment 7:** According to the Commenter, additional reasonable progress is necessary at the Wolf Island and Okefenokee Wilderness Areas, where the URP is not predicted to be met. The Commenter states that Georgia has a responsibility to ensure that all necessary emissions reductions take place and must show that its RPGs are reasonable based on the evaluation of any potentially affected sources. The Commenter regards Georgia's efforts to only evaluate sources that contributed to visibility impairment from SO<sub>2</sub> over a certain threshold as inadequate. The Commenter recommends that EPA ensure that additional sources, if not all contributing sources of all visibility-impairing pollutants, be evaluated for reasonable progress.

**Response 7:** EPA's RHR requires states to establish RPGs, measured in deciviews, for each mandatory federal Class I area for the purpose of improving visibility on the haziest days and ensuring no degradation in visibility on the clearest days over the period of each implementation plan. *See* 40 CFR 51.308(d)(1). RPGs are interim goals that represent incremental visibility improvement over time toward the goal of natural background conditions and are developed in consultation with other affected states and Federal Land Managers.

The RHR establishes an additional analytical requirement for states in the process of establishing the RPG. This analytical requirement requires states to determine the rate of improvement in visibility needed to reach natural conditions by 2064, and to set each RPG taking this "glidepath" into account. EPA adopted this approach, in part, to ensure that states use a common analytical framework that accounts for the regional differences affecting visibility and, in part, to ensure an informed and equitable decision making process. The glidepath is not a presumptive target, and states may establish a RPG that provides for greater, lesser, or equivalent

visibility improvement as that described by the glidepath. As noted in EPA guidance, in deciding what amount of emissions reduction is appropriate in setting the RPG, the states may take into account the fact that the long-term goal of no manmade impairment encompasses several implementation periods.<sup>9</sup>

Consistent with EPA's Reasonable Progress Guidance, GA EPD performed a detailed analysis to determine which sources and emissions most contributed to visibility impairment. The conclusion of this analysis was that Georgia should consider what additional control measures for electric utilities and industrial boilers are reasonable. GA EPD also determined that it was appropriate to also consider additional control measures from industrial sources other than boilers that contributed to the same magnitude of visibility impairment as boilers, and EPA agrees with this determination. Under Georgia's rule, "Clean Air Interstate Rule SO<sub>2</sub> Annual Trading Program," which incorporates by reference all the provisions of EPA's CAIR rule, SO<sub>2</sub> emissions from Georgia EGUs will be capped at 149,140 tons in 2015, a 70 percent reduction from 2002 actual emissions. *See Georgia Air Quality Control Rules 391-3-1-.02(13).*

For sources that significantly contribute to visibility impairment at mandatory Class I federal areas not clearly meeting the URP (such as Okefenokee and Wolf Island), GA EPD did consider additional controls at CAIR-affected units. However, the State concluded, based on the four statutory factors, that no additional emissions reductions beyond CAIR from these sources were reasonable for this implementation period, and EPA agrees with the State's determination.

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<sup>9</sup> Id. at pages 1.3-1.4.

Expected emissions reductions are projected to achieve a 3.28 deciviews of improvement in visibility at Okefenokee and Wolf Island by 2018, while 3.6 deciviews of improvement in visibility would meet URP in 2018. Since the Okefenokee and Wolf Island RPGs show a slower rate of improvement in visibility than the rate that would be needed to attain natural conditions by 2064 (i.e., the URP or glidepath), GA EPD estimated that an additional 6-7 years are needed to attain natural conditions. EPA concludes that Georgia's RPGs were developed consistent with the RHR and EPA guidance.

**Comment 8:** The Commenter states that in several instances, Georgia's reasonable progress determinations relied on the predicted decrease in heat input from the subject sources.

According to the Commenter, this assumed decrease in heat input cannot be relied upon unless it is enforceable.

**Response 8:** Georgia's modeling for 2018 projects its best estimate of likely emissions based on the expected capacity utilization at each facility in 2018, not a worst case based on all facilities operating at maximum allowable capacity. As part of the Visibility Improvement State and Tribal Association of the Southeast (VISTAS) air quality modeling, VISTAS, in cooperation with the other eastern regional planning organizations (RPOs), generated future-year emissions inventories for the electric generating sector of the contiguous United States using the Integrated Planning Model (IPM). IPM is a dynamic linear optimization model that can be used to examine air pollution control policies for various pollutants throughout the contiguous United States for the entire electric power system. The dynamic nature of IPM enables projection of the behavior

of the power system over a specified future period. The IPM considers growth in demand for electricity, the construction of new units, changes in fuel mix, as well as a predicted set of emissions controls results in some units projected as having greater utilization (and greater heat input) while others are projected to have less utilization (and less heat input). Optimization logic in IPM determines the least-cost means of meeting electric generation and capacity requirements while complying with specified constraints including air pollution regulations, transmission bottlenecks, and plant-specific operational constraints. The IPM modeling runs took into consideration both CAIR implementation and Georgia's rule, "Multipollutant Control for Electric Utility Steam Generating Units," requirements for Georgia Power. *See Georgia Air Quality Control Rules 391-3-1-.02(2)(sss)*. EPA regards this as an appropriate means to project future emissions and changes in visibility.

The five-year review is a mechanism to assure that differences from projected emissions are considered and their impact on the 2018 RPGs is evaluated. In the regional haze program, uncertainties associated with modeled emissions projections into the future are addressed through the requirement under the RHR to submit periodic progress reports in the form of a SIP revision. Specifically, 40 CFR 51.308(g) requires each state to submit a report every five years evaluating progress toward the RPGs for each mandatory Class I area located in the state and for each Class I area outside the state that may be affected by emissions from the state. Since this five-year progress re-evaluation is a mandatory requirement, it is unnecessary for EPA to take additional measures to "ensure" that the projections of heat input are legally enforceable. In the

specific instances cited by the Commenter, the State's analysis of projected capacity utilization and the resultant heat input and the State's reliance on these projections to establish its RPGs meet the requirements of the regional haze regulations and EPA guidance.

**Comment 9:** The Commenter expresses concern with the interrelationship of EPA's proposed limited disapproval of Georgia's regional haze SIP submittal in the December 30, 2011, action proposing to find that the Transport Rule is "Better than BART," and EPA's proposed limited approval of the Georgia's regional haze SIP in EPA's February 27, 2012 action. The "Better than BART" action states that EPA is proposing a limited disapproval of the LTS and that EPA intends to act on the LTS in a separate action whereas the limited approval action states that EPA is not taking action on Georgia's regional haze SIP insofar as it relied on CAIR, which according to the Commenter, "presumably includes" Georgia's LTS. The Commenter believes that each of these actions "promises that the other will provide a [LTS] but neither rule actually does. . . . underscore[ing] the inappropriateness of a 'limited approval.'" The Commenter contends that the SIP must include an adequate LTS that has been subject to public notice and comment. The Commenter also believes that EPA should disapprove Georgia's regional haze SIP because the State's source retirement discussion, required under 40 CFR 51.308(d)(3)(v) as part of a state's LTS development, was inadequate as it was "limited to now out of date information describing existing, not future, emissions" and "contained little discussion of changes in energy and other markets and their likely effect on EGUs and possibly non-EGUs."

**Response 9:** EPA explained in its February 27, 2012, action that the Agency was proposing a limited approval of Georgia's February 11, 2010, SIP revision and November 19, 2010, SIP supplement, addressing regional haze because these revisions, as a whole, strengthen the Georgia SIP. Under CAA sections 301(a) and 110(k)(6) and EPA's long-standing guidance, a limited approval results in approval of the entire SIP submittal, even of those parts that are deficient and prevent EPA from granting a full approval of the SIP revision.

In the February 27 action, EPA also explained that the Agency had proposed a limited disapproval of the Georgia regional haze SIP in the December 30 "Better than BART" rule because of deficiencies in the State's regional haze SIP submittal arising from the State's reliance on CAIR to meet certain regional haze requirements. EPA stated that it was not proposing to take action in the February 27, 2012, proposed rulemaking on issues associated with Georgia's reliance on CAIR in its regional haze SIP. The limited approval action acted as approval of the entire regional haze SIP, including the LTS, even though it is deficient due to the State's reliance on CAIR. EPA believes that these actions provided sufficient notice allowing the public to comment on the adequacy of the LTS as evidenced by the Commenter's remarks regarding the substance of the State's strategy.

Regarding the content of the LTS, as was discussed in the Georgia SIP revisions and in the February 27, 2012, proposed rulemaking, Georgia did evaluate the potential contributions of all anthropogenic sources and concluded that the preponderance of the visibility impairment was due to sulfates. In particular, for Okefenokee and Cohutta, sulfate particles resulting from SO<sub>2</sub>



emissions contribute roughly 69 and 84 percent, respectively, to the calculated light extinction on the haziest days. In contrast, ammonium nitrate contributed five percent or less of the calculated light extinction at VISTAS Class I areas on the 20 percent worst visibility days. Since sulfate particles resulting from SO<sub>2</sub> emissions are the dominant contributor to visibility impairment on the 20 percent worst days at the three Georgia Class I areas, Georgia concluded that reducing SO<sub>2</sub> emissions from EGU and non-EGU point sources in the VISTAS states would have the greatest visibility benefits.

Georgia considered the factors listed in 40 CFR 51.308(d)(3)(v) to develop its LTS as described in detail in the proposed rulemaking. Source retirement and replacement schedules are explicitly part of the emissions inventory that is used to project future conditions and provide a realistic estimate of future visibility impairing emissions from the identified sources. At the time that the analyses were completed, they were based on the best information available. The projected inventories for 2009 and 2018 account for post-2002 emissions reductions from promulgated and proposed federal, state, local, and site-specific control programs.

For EGUs, the IPM was run to estimate emissions of the proposed and existing units in 2009 and 2018 based on expected future demand. Where future demand is projected to exceed existing capacity, IPM adds additional units. Future fuel type usage at individual plants and changes to fuel types were modeled based on the expected availability of fuels, capability of the plant and least cost dispatch projections based on expected price and control requirements. These results were further adjusted based on state and local air agencies' knowledge of planned emissions controls at specific EGUs.

For non-EGUs, VISTAS used recently updated growth and control data consistent with the data used in EPA's CAIR analyses supplemented by state and local air agencies' data and updated forecasts from the U.S. Department of Energy. These updates are documented in the MACTEC emissions inventory report "Documentation of the 2002 Base Year and 2009 and 2018 Projection Year Emission Inventories for VISTAS" dated February 2007 (Appendix C of the February 2010 Georgia regional haze SIP submittal).

As explained in the proposed rulemaking, these projections can be expected to change as additional information regarding future conditions becomes available. For example, new sources may be built, existing sources may shut down or modify production in response to changed economic circumstances, and facilities may change their emissions characteristics as they install control equipment to comply with new rules. To address this, the RHR calls for a five-year progress review after submittal of the initial regional haze plan. The purpose of this progress review is to assess the effectiveness of emissions management strategies in meeting the RPG and to provide an assessment of whether current implementation strategies are sufficient for the state or affected states to meet their RPGs. If a state concludes, based on its assessment, that the RPGs for a Class I area will not be met, the RHR requires the state to take appropriate action. *See* 40 CFR 52.308(h). The nature of the appropriate action will depend on the basis for the state's conclusion that the current strategies are insufficient to meet the RPGs. Georgia specifically committed to follow this process in the LTS portion of its submittal.

**Comment 10:** The Commenter states that EPA should improve its proposal, enforce the regional haze program, fully evaluate all emissions control options, and require controls that are reasonable, efficient, and cost effective to “clear the haze along the Appalachian National Scenic Trail and in Great Smoky Mountains National Park.” The Commenter believes that EPA has “proposed to exempt” Georgia’s oldest power plants from “long-standing cleanup requirements in favor of an existing program that, in some cases, will mean little or no actual cleanup.” The Commenter also contends that sources outside of Georgia contribute to regional haze in the aforementioned areas and that those sources “must be made responsible.”

**Response 10:** As discussed in the proposed rulemaking action, states have discretion in weighing the factors that they must consider in evaluating control determinations to satisfy BART and reasonable progress requirements, and EPA finds that Georgia’s determinations are consistent with the RHR and EPA guidance. EPA did not propose to “exempt” any Georgia sources from regional haze requirements in favor of any existing program. As allowed by the regional haze regulations at the time, Georgia relied on CAIR for some of its power plants rather than performing source-specific BART evaluations. For reasonable progress, Georgia concluded that additional EGU control beyond CAIR during the first implementation period was not reasonable for these sources after consideration of the four statutory factors for each of the affected units.

Regarding sources outside of Georgia and their contribution to visibility impairment at Georgia’s Class I areas, as discussed in the proposed rulemaking (77 FR 11474-11475), Georgia’s regional haze SIP satisfies the regional haze requirements to identify out-of-state

sources that cause or contribute to visibility impairment in the State's Class I areas and documents consultations with such states to obtain any appropriate emissions reductions. The State notes in its SIP that many of these sources located in other states are subject to control because of CAIR's requirements.

### **III. What is the Effect of This Final Action?**

Under CAA sections 301(a) and 110(k)(6), and EPA's long-standing guidance, a limited approval results in approval of the entire SIP revision, even of those parts that are deficient and prevent EPA from granting a full approval of the SIP revision.<sup>10</sup> Today, EPA is finalizing a limited approval of Georgia's February 11, 2010, and November 19, 2010, regional haze SIP revisions. This limited approval results in approval of Georgia's entire regional haze submission and all its elements. EPA is taking this approach because Georgia's SIP will be stronger and more protective of the environment with the implementation of those measures by the State and having federal approval and enforceability than it would without those measures being included in its SIP.

### **IV. Final Action**

EPA is finalizing a limited approval of a revision to the Georgia SIP submitted by the State of Georgia on February 11, 2010, as supplemented November 19, 2010, as meeting some

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<sup>10</sup> 1992 Calcagni Memorandum.

of the applicable regional haze requirements as set forth in sections 169A and 169B of the CAA and in 40 CFR 51.300–308.

## **V. Statutory and Executive Order Reviews**

### **A. Executive Order 12866, Regulatory Planning and Review**

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled “Regulatory Planning and Review.”

### **B. Paperwork Reduction Act**

Under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., OMB must approve all “collections of information” by EPA. The Act defines “collection of information” as a requirement for answers to ... identical reporting or recordkeeping requirements imposed on ten or more persons .... 44 U.S.C. 3502(3)(A). The Paperwork Reduction Act does not apply to this action.

### **C. Regulatory Flexibility Act (RFA)**

The RFA generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing.

Therefore, because the federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the federal-state relationship under the CAA, preparation of flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

#### **D. Unfunded Mandates Reform Act (UMRA)**

Under sections 202 of the UMRA of 1995 (“Unfunded Mandates Act”), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that today's action does not include a federal mandate that may result in estimated costs of \$100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

**E. Executive Order 13132, Federalism**

Executive Order 13132 (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.” Under Executive Order 13132, EPA may not issue a regulation that has Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has Federalism implications and that preempts state law unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

**F. Executive Order 13175, Coordination with Indian Tribal Governments**

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” This rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments. Thus, Executive Order 13175 does not apply to this rule.

**G. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks**

*Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be “economically significant” as



defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

#### **H. Executive Order 13211, Actions that Significantly Affect Energy Supply, Distribution, or Use**

This rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

#### **I. National Technology Transfer and Advancement Act (NTTAA)**

Section 12 of the NTTAA of 1995 requires federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use “voluntary consensus standards” (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to this action. Today’s action does not require the public to perform activities conducive to the use of VCS.

**J. Congressional Review Act**

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

**K. Petitions for Judicial Review**

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

## **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

**AUTHORITY:** 42 U.S.C. 7401 *et seq.*

Dated: June 15, 2012

A. Stanley Meiburg,

Acting Regional Administrator,  
Region 4.

40 CFR part 52 is amended as follows:

### **PART 52--[AMENDED]**

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

### **Subpart L - Georgia**

2. Section 52.570, the table in paragraph (e) is amended by adding entries 34. and 35. in numerical order to read as follows:

**§52.570 Identification of plan.**

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(e) \* \* \*

EPA-Approved Georgia non-regulatory provisions

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date
**	**	**	*
34. Regional Haze Plan	Statewide	2/11/10	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]
35. Regional Haze Plan Supplement (including BART and Reasonable Progress emissions limits)	Statewide	11/19/10	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]

[FR Doc. 2012-15691 Filed 06/27/2012 at 8:45 am; Publication Date: 06/28/2012]